

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OCWEN LOAN SERVICING, LLC,	:	CIVIL NO. 1:10-CV-0989
	:	
Plaintiff	:	(Chief Judge Kane)
	:	
v.	:	
	:	
CHERYL A. TEKE,	:	
	:	
Defendant	:	

REPORT AND RECOMMENDATION

The plaintiff is a mortgage lender. The defendant is a borrower who has defaulted in this civil action and who has defaulted on the mortgage. This civil action brought under the court's diversity jurisdiction is an action in mortgage foreclosure and on the promissary note signed by the defendant.

After a bankruptcy stay of this action had ended, the defendant's default (Doc. 11) was entered on October 25, 2010.

A motion (Doc. 10) of the plaintiff for a default judgment was referred to me by Order of November 17, 2010. A hearing was scheduled, then rescheduled. Then the plaintiff

asked for court authorization to present the plaintiff's evidence in writing, and that request was granted. Order of January 25, 2011, Doc. 21.

On January 31, 2011, the plaintiff filed a second motion for a default judgment¹ and a brief in support of that motion.

The defendant has not filed anything in opposition to either of the two motions for a default judgment, and she remains in default. The plaintiff has established by affidavit and exhibits that as of January 26, 2011 the total amounts due and owing to the plaintiff from the defendant are as follow:

Principal Balance	\$102,865.61
Interest at 6.75%	\$9,084.18
Accruing since October 1, 2009	
to January 26, 2011	
(Per Diem \$19.29)	
Escrow Deficit (Advances)	\$3,589.84
Property Inspections	\$52.50
Bankruptcy Attorney's Fees	\$700.00
Previously Paid Attorney's Fees	\$1,797.00
Late Charges	\$68.30
Satisfaction Cost	\$28.50
U.S. Marshal -Sale Deposit	
(Anticipated)	\$100.00

1. Plaintiff's Motion for Default Judgment and to Determine Liquidated Damages Pursuant to Fed.R.Civ.P. 55(b) (2). Doc. 22.

Federal Express	\$20.00
Outstanding Foreclosure	
Attorneys Fees	\$375.00
TOTAL	\$118,680.93

See Doc. 23, page 4. The plaintiff's prayer for relief in the form of a default judgment is for a judgment in the amount of \$118,747.88 (Doc. 23, page 6), an amount that is greater by \$66.95 than the total shown above. We do not see a basis for a liquidated amount of damages as of January 26, 2011 greater than \$118.680.93.

The plaintiff's prayer for default judgment relief includes future liquidated damages amounts, but not an order directing the sale of the defendant's home. The brief does not explain this. An order directing the sale of the defendant's home had been a part of the prayer for default judgment relief in the plaintiff's first motion. The brief does not address the closing of this case. The proposed form order submitted by the plaintiff does not address the closing of the case.

It is recommended that the plaintiff's motions (Docs. 9 and 22) for a default judgment in the amount of \$118,680.93 plus interest in the amount of \$19.29 per day beginning on January 27, 2011 be granted and that the Clerk be directed to close the file.²

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: February 15, 2011.

2. If the plaintiff seeks further relief, the plaintiff can inform the court by objections to this Report and Recommendation.